



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

April 26, 1996

The Honorable Luis V. Saenz
Cameron County District Attorney
Cameron County Courthouse
974 East Harrison Street
Brownsville, Texas 78520

Letter Opinion No. 96-042

Re: Notice requirements applicable to
nonprofit water supply corporation under
its bylaws and Open Meetings Act (ID#
36037)

Dear Mr. Saenz:

Your inquiry concerns the El Jardin Water Supply Corporation (the "corporation"), a nonprofit corporation organized under article 1434a, V.T.C.S. The Texas Non-Profit Corporation Act¹ applies to such corporations to the extent that its provisions do not conflict with article 1434a, V.T.C.S.² Water supply corporations established under article 1434a, V.T.C.S., must comply with the Texas Open Meetings Act.³ Notice of membership meetings is to be given in accordance with two sets of legal provisions, the notice provisions of the Open Meetings Act and those of the Non-Profit Corporation Act, as supplemented or modified by corporate bylaws. Your questions relate to the notice each source of law requires for a meeting of the corporation on amending its bylaws.

You inform us that the persons who buy water from the corporation constitute its membership. On August 1993, the board mailed notice to the membership of its intent to amend the bylaws of the corporation at a special meeting.⁴ Notice was given in compliance with the corporation's bylaws, which provide in part:

These By-Laws may be altered, amended, or repealed by a vote of a majority of the members present at any regular meeting of the Corporation, or at any special meeting of the corporation called for that purpose, except that the members shall not have the power to change the purpose of the Corporation so as to decrease its rights

¹V.T.C.S. art. 1396-1.01 to -10.07.

²V.T.C.S. art. 1434a, § 2(d); *see also* V.T.C.S. art. 1396-10.04.

³*See* Gov't Code § 551.001(3)(I).

⁴You do not inquire about the adequacy of notice of the special meeting under the Open Meetings Act or other law applicable to the corporation.

and powers under the laws of the State, . . . or so to amend the By-Laws as to effect a fundamental change in the policies of the Corporation. Notice of any amendment to be made at a special meeting of the members must be given at least ten (10) days before such meeting and must set forth the amendments to be considered.⁵

Written notice of a special meeting must state the time, place, and purpose of the meeting and must be mailed to each member of the corporation.⁶

At the special meeting, the members of the corporation voted against the bylaw amendments. Subsequently, the board set the date for the annual meeting of the membership for March 22, 1994 and notice of the meeting was mailed to the members. The individual notice to the membership did not mention bylaw amendments. Notice of the meeting was also posted on March 18, 1994 and this included the item "Bylaw Amendments."

You first ask

Whether "Bylaw Amendments" was sufficiently specific as notice to inform the membership of El Jardin Water Supply Corporation that the Board had printed proposed bylaw amendments and intended to vote on them at the annual meeting?

Your first question relates to the notice posted by the water supply corporation to comply with the Open Meetings Act. An entity subject to the Open Meetings Act must post written notice of the "date, hour, place, and subject of each meeting" it holds.⁷ The notice is directed at members of the general public who are interested in the governmental body's deliberations, and is not designed to reach the individuals whose private interests are most likely to be affected by the proposed government action.⁸ Notice given pursuant to the Open Meetings Act must be evaluated in terms of its effectiveness in reaching interested members of the general public.

⁵El Jardin Water Supply Corporation Bylaws Revised (5/79) & (12/91) art. XX, at 7-8.

⁶*Id.* art. XII; see V.T.C.S. art. 1396-2.11.

⁷Gov't Code § 551.041; see *id.* § 551.043 (notice must be posted in place readily accessible to general public at all times for at least 72 hours before time of meeting).

⁸*San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 765 (Tex. 1991); see also *Rettberg v. Texas Dept. of Health*, 873 S.W.2d 408 (Tex. App.—Austin 1994, writ denied) (Open Meetings Act did not entitle executive secretary of state board to individual notice that his position was topic for discussion at special meeting); *Stockdale v. Meno*, 867 S.W.2d 123 (Tex. App.—Austin 1993, writ denied) (notice of meeting to discuss nonrenewal of teacher's contract was not required to provide personal notice to the teacher).

We cannot determine as a matter of law whether the notice item "Bylaw Amendments" was sufficient for purposes of the Open Meeting Act, because this issue involves questions of fact, which cannot be resolved in an Attorney General Opinion. For example, facts about the public interest in the corporation's deliberations are relevant to the adequacy of the notice item. Statements by the Texas Supreme Court on the notice requirement provide some guidance as to the adequacy of notice. The court has said that "the Open Meetings Act requires full disclosure of the subject matter of the meetings," and that more specificity is required when the subject slated for discussion is of special interest to the public.⁹ It has, however, also concluded that it is unnecessary

to post copies of proposed resolutions or to state all of the consequences which may necessarily flow from the consideration of the subject stated.¹⁰

Thus, the Open Meetings Act did not require the corporation to post the text of any proposed bylaw amendments, and the posted notice would not be invalid merely because it did not include these items.

Your second question is as follows:

If a governmental body imposes a greater burden of notice than the Texas Open Meeting Act requires, does it become a violation of the Texas Open Meetings Act, when the governmental body complies only with the notice requirement of the Act, and not the notice requirement it imposed on itself?¹¹

This question is based on the premise that the notice delivered to the members of the corporation did not comply with the law. However, we find no reason to conclude that the individual notice to the members did not comply with the applicable statutes and corporate bylaws.

A nonprofit corporation has power to alter its bylaws, not inconsistent with its articles of incorporation or with the laws of the state.¹² The Non-Profit Corporation Act

⁹*Cox Enters. v. Board of Trustees*, 706 S.W.2d 959, 959-60 (Tex. 1986); see also Attorney General Opinion H-1045 (1977).

¹⁰*Texas Turnpike Auth. v. City of Fort Worth*, 554 S.W.2d 675, 676 (Tex. 1977) (quoted in *San Antonio v. Fourth Court of Appeals*, 820 S.W.2d at 765).

¹¹You also ask whether there is "such a thing as violating the spirit and intent of the Texas Open Meetings Act, even though the Act itself has been complied with?" The penalties and remedies provided in the Open Meetings Act apply only if the act has been violated. See Gov't Code ch. 551, subch. G.

¹²V.T.C.S. art. 1396-2.02(12).

establishes the following notice requirement for membership meetings of nonprofit corporations:

In the case of a corporation other than a church, written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally, by facsimile transmission, or by mail, . . . to each member entitled to vote at such meeting.¹³

The written notice of a meeting that must be delivered to members of the nonprofit corporation pursuant to statute need not state the purpose of the meeting, unless it is a special meeting. The corporation's bylaws provide that the notice of a bylaw amendment proposed to be made at a special meeting "must set forth the amendments to be considered,"¹⁴ but no such requirement applies when bylaws are considered for amendment at a regular meeting. Since we do not agree with the underlying premise of your second question—that the notice delivered to the members of the corporation failed to comply with the law and bylaws—we need not address that question.¹⁵

S U M M A R Y

A water supply corporation organized under article 1434a, V.T.C.S., is subject to the Texas Open Meetings Act and to the Texas Non-Profit Corporation Act to the extent its provisions do not conflict with article 1434a, V.T.C.S. Members of the corporation are to be individually notified of its meetings in accordance with the Non-Profit Corporation Act and the corporate bylaws. Notice posted pursuant to the Open Meetings Act is directed at members of the general public who are interested in the governmental body's deliberations, and is not designed to reach the individuals whose private interests are most likely to be affected by the proposed government action. Whether the item "Bylaw Amendments" in the

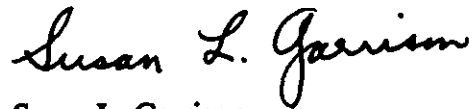
¹³V.T.C.S. art. 1396-2.11.

¹⁴El Jardin Water Supply Corporation Bylaws Revised (5/79) & (12/91) art. XII.

¹⁵We point out, however, that the remedies and penalties provided in the Open Meetings Act are expressly tied to violations of that act. See Gov't Code §§ 551.141 (remedy for action taken "in violation of this chapter"), .142(a) (remedy for "violation or threatened violation of this chapter"), .143 - .144 (criminal penalties for certain violations of "this chapter"), .145 - .146 (penalties for violations concerning Open Meetings Act provisions on certified agenda). The Penal Code provides that "[c]onduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawful adopted under a statute." Penal Code § 1.03(a).

notice posted for a meeting of the El Jardin Water Supply Corporation was specific enough to comply with the Open Meetings Act involves the resolution of fact questions. The posted notice would not, however, violate the Open Meetings Act merely because it did not include the text of any proposed bylaw amendments.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee